

Coast Guard, DHS

§ 5.569

(b) The order is directed against all licenses, certificates or documents, except that in cases of negligence or professional incompetence, the order is made applicable to specific licenses, certificates or documents. If the Administrative Law Judge determines that the respondent is professionally incompetent in the grade of the license, certificate or document held, but is considered competent in a lower grade, the license, certificate or document may be revoked and the issuance of one of a lower grade ordered.

(c) An order must specify whether the license, certificate or document affected is:

- (1) Revoked;
- (2) Suspended outright for a specified period after surrender;
- (3) Suspended for a specified period, but placed on probation for a specific period; or
- (4) Suspended outright for a specified period, followed by a specified period of suspension on probation.

(d) The order will normally state, *that the license, certificate or document is to be surrendered to the Coast Guard immediately*, if the order is one of revocation or includes a period of outright suspension. In cases involving special circumstances, the order may provide for surrender on a certain date.

(e) The time of any period of outright suspension ordered does not commence until the license, certificate or document is surrendered to the Coast Guard. The time of any period of suspension on probation begins at the end of any period of outright suspension or the effective date of the order if there is no outright suspension.

[CGD 82-002, 50 FR 32184, Aug. 9, 1985, as amended by USCG-1998-3472, 64 FR 28075, May 24, 1999]

§ 5.569 Selection of an appropriate order.

(a) This section addresses orders in a general manner. The selection of an appropriate order is the responsibility of the Administrative Law Judge, subject to appeal and review. The investigating officer and the respondent may suggest an order and present argument in support of this suggestion during the presentation of aggravating or mitigating evidence.

(b) Except for acts or offenses for which revocation is mandatory, factors which may affect the order include:

- (1) Remedial actions which have been undertaken independently by the respondent;
- (2) Prior record of the respondent, considering the period of time between prior acts and the act or offense for which presently charged is relevant; and
- (3) Evidence of mitigation or aggravation.

(c) After an order of revocation is entered, the respondent will be given an opportunity to present relevant material on the record for subsequent consideration by the special board convened in the event an application is filed in accordance with subpart L of this part.

(d) Table 5.569 is for the information and guidance of Administrative Law Judges and is intended to promote uniformity in orders rendered. This table should not affect the fair and impartial adjudication of each case on its individual facts and merits. The orders are expressed by a range, in months of outright suspension, considered appropriate for the particular act or offense prior to considering matters in mitigation or aggravation. For instance, without considering other factors, a period of two to four months outright suspension is considered appropriate for *failure to obey a master's written instructions*. An order within the range would not be considered excessive. Mitigating or aggravating factors may make an order greater or less than the given range appropriate. Orders for repeat offenders will ordinarily be greater than those specified.

TABLE 5.569—SUGGESTED RANGE OF AN APPROPRIATE ORDER

| Type of offense | Range of order (in months) |
|--|----------------------------|
| Misconduct: | |
| Failure to obey master's/ship officer's order. | 1-3. |
| Failure to comply with U.S. law or regulations. | 1-3. |
| Possession of intoxicating liquor. | 1-4. |
| Failure to obey master's written instruction. | 2-4. |
| Improper performance of duties related to vessel safety. | 2-5. |

§ 5.701

46 CFR Ch. I (10–1–07 Edition)

TABLE 5.569—SUGGESTED RANGE OF AN APPROPRIATE ORDER—Continued

| Type of offense | Range of order (in months) |
|--|---|
| Failure to join vessel (required crew member). | 2–6. |
| Violent acts against other persons (without injury). | 2–6. |
| Failure to perform duties related to vessel safety. | 3–6. |
| Theft | 3–6. |
| Violent acts against other persons (injury). | 4-Revocation. |
| Use, possession, or sale of dangerous drugs. | Revocation (Note: see § 5.59). |
| Negligence: | |
| Negligently performing duties related to vessel navigation. | 2–6. |
| Negligently performing non-navigational duties related to vessel safety. | 1–3. |
| Neglect of vessel navigation duties. | 3–6. |
| Neglect of non-navigational safety related duties. | 2–4. |
| Incompetence | The only proper order for a charge of incompetence found proved is revocation. |
| Violation of Regulation: | |
| Refusal to take chemical drug test. | 12–24 |
| Refusal to take required alcohol test. | 12–24 |
| Dangerous drugs (46 U.S.C. 7704). | The only proper order for a charge under 46 U.S.C. 7704 found proved is revocation. |

[CGD 82-002, 50 FR 32184, Aug. 9, 1985, as amended by CGD 86-067, 53 FR 47079, Nov. 21, 1989; USCG-2000-7759, 66 FR 42967, Aug. 16, 2001]

Subpart I [Reserved]

Subpart J—Appeals

§ 5.701 Appeals in general.

A party may appeal the decision of an ALJ under the procedures in subpart J of 33 CFR part 20. A party may appeal only the following issues:

(a) Whether each finding of fact rests on substantial evidence.

(b) Whether each conclusion of law accords with applicable law, precedent, and public policy.

(c) Whether the ALJ committed any abuses of discretion.

(d) The ALJ's denial of a motion for his or her disqualification.

[USCG-1998-3472, 64 FR 28075, May 24, 1999]

§ 5.707 Stay of effect of decision and order of Administrative Law Judge on appeal to the Commandant; temporary license, certificate, or document.

(a) A person who has appealed from a decision suspending outright or revoking a license, certificate or document, except for revocation resulting from an offense enumerated in § 5.59, may file a written request for a temporary license, certificate or document. This request must be submitted to the Administrative Law Judge who presided over the case, or to any Officer in Charge, Marine Inspection for forwarding to the Administrative Law Judge.

(b) Action on the request is taken by the ALJ unless the hearing transcript has been forwarded to the Commandant, in which case, the Commandant will make the final action.

(c) A determination as to the request will take into consideration whether the service of the individual is compatible with the requirements for safety at sea and consistent with applicable laws. If one of the offenses enumerated in § 5.61(a) has been found proved, the continued service of the appellant will be presumed not compatible with safety at sea, subject to rebuttal by the appellant. A temporary document or license may be denied for that reason alone.

(d) All temporary documents will provide that they expire not more than six months after issuance or upon service of the Commandant's decision on appeal, whichever occurs first. If a temporary document expires before the Commandant's decision is rendered, it may be renewed, if authorized by the Commandant.

(e) If the request for a temporary document is denied by the Administrative Law Judge, the individual may appeal the denial, in writing, to the Commandant within 30 days after notification of such denial. Any decision by the Commandant to deny is the final agency action.

(f) Copies of the temporary documents issued become a part of the record on appeal.

[CGD 82-002, 50 FR 32184, Aug. 9, 1985, as amended by USCG-2004-18884, 69 FR 58342, Sept. 30, 2004]